UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA

Gerald Colpitts, as Personal Representative)
of the Estate of Bernadette Muratore,) Case No.: 6:20-cv-04065-DCC
)
Plaintiff,)
	DEFENDANT'S MOTION TO
v.) DISMISS
)
NHC Healthcare Clinton, LLC)
)
Defendant.	
)

TO: J. ERIC CAVANAUGH, ESQUIRE, JOSEPH O. THICKENS, ESQUIRE, AND WILLIAM H. YARBOROUGH, JR., ESQUIRE, ATTORNEYS FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that Defendant NHC Healthcare/Clinton, LLC (improperly identified as NHC Healthcare Clinton, LLC, and hereinafter "Defendant" and/or "NHC Clinton"), by and through its undersigned counsel, will move before the Judge of the United States District Court for the District of South Carolina on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be hear, for an Order dismissing the Complaint against this Defendant pursuant to Rules 12(b)(1 & 6) of the Federal Rules of Civil Procedure. The motion is based on the following grounds:

1. Plaintiff's claims are preempted by Federal law and are caused by, arise out of, relate to, or result from Defendant was/is a "Covered Person" engaged in "Recommended Activities" from "Authorities Having Jurisdiction" involving "Covered Countermeasures" during the "Effective Period" as those terms are defined and used in the Public Readiness and Emergency Preparedness Act ("PREP Act"), 42 U.S.C. §§ 247d-6d, 247d-6e, and 85 Fed. Reg. 15198 (Mar. 17, 2020), amended by 85 Fed. Reg. 21012 (Apr. 15, 2020) and 85 Fed. Reg. 35100 (Jun. 8, 2020) and 85 Fed. Reg. 52136 (August 24, 2020) ("the Declaration"). As such,

Defendant is entitled to immunity from Plaintiff's claims;

- 2. Plaintiff has failed to exhaust the available administrative remedies available under the PREP Act by failing to file a claim through the Countermeasures Injury Compensation Program; and
- 3. The Court lacks subject matter jurisdiction over Plaintiff's claims of "willful misconduct" because, pursuant to the PREP Act, any such claims shall be filed and maintained only in the United States District Court for the District of Columbia;

RICHARDSON PLOWDEN & ROBINSON, PA

s/Zachary B. Hayden

William C. McDow [6359]

Shelton W. Haile [9637]

Zachary B. Hayden [12932]

1900 Barnwell St.

P.O. Drawer 7788

Columbia, SC 29202

(803) 771-4400

bmcdow@richardsonplowden.com

shaile@richardsonplowden.com

zhayden@richardsonplowden.com

Attorneys for Defendant NHC HealthCare/Clinton, LLC (improperly identified as NHC Healthcare Clinton, LLC)

November 24, 2020